IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO. 698 OF 1995

The State of Maharashtra ...Appellant.

Versus

1. Shankarrao Kundlik Mohite,

2. Jitendra Vijaysing Chavan,

3. Mahamad Nanif Hussin Golandaj,

4. Chhatrapati Rajaram Sahakari
Sakhar Karkhana Ltd.,

All R/o. C/o Chhatrapati
Rajaram Sahakari Sakhar
Karkhana Ltd., Kasaba Bavda,
Tq. Karveer, Dist. Kolhapur. ...Respondents.

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Shri. A.S. Shitole, A.P.P. for appellant-State.

Mrs. Varsha Palav for respondent Nos. 1 to 4.

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CORAM: SMT. V.K. TAHILRAMANI, J.
DATED: 16TH DECEMBER, 2004

ORAL JUDGMENT:-

1. Through this appeal, the appellant i.e. the State of Maharashtra challenges the judgment and order dated 21.8.1995 passed by the learned Special Judge, Kolhapur in Special Case No.8/90. By the said judgment and order, the respondents i.e. original accused 1 to 4 came to be acquitted of the offences under Sections 7 and 10 r.w. Section 3 of the Essential Commodities Act.

2. The prosecution case briefly stated is as under:-

. That the respondent Nos. 1 to 3 are the employees of respondent No.4 Sugar Factory namely Shri. Chhatrapati Rajaram Sahakari Sakhar Karkhana Ltd., situated at Kasaba Bavda, Tq. Karveer, Dist. Kolhapur (hereinafter referred to as the accused factory). The accused factory is a Co-operative factory collecting sugar-cane from the farmers within its jurisdiction for the purpose of crushing and manufacturing the sugar. The respondent No.1 is the Field Officer in the accused factory, the respondent No.2 is the Agricultural Overseer of the said accused factory and the respondent No.3 is the Field Man of the accused factory. The accused factory is represented by its Managing Director Shri. Babanrao Ganpatrao Shinde.

. According to the prosecution, village Fejiwade is allotted to Dudhganga Vedhganga Sahakari Sakhar Karkhana Ltd. (hereinafter referred to as the complainant factory). This order has been made by the Director of Sugar, Pune. As the village Fejiwade was allotted to complainant factory, the complainant factory is entitled to purchase the sugar-cane grown in village Fejiwade, thus, the accused factory is not entitled to purchase the sugar-cane grown at village Fejiwade. However, despite this, on 11.12.89, the respondent Nos. 1

to 3 alongwith labour, went to Gut No.178 of village Fejiwade, belonging to one Govind Bala Patil. They went in truck No. MWK 274. While the labourers were cutting sugar-cane from the said Gut No.178 of village Fejiwadi, at that time P.W.1 Pandurang Chandekar, the Agricultural Overseer of the complainant factory went there and he informed the respondent Nos. 1 to 3 that the village Fejiwade was allotted to the complainant factory by the Director of Sugar, Pune, and hence, the respondents cannot cut the sugar-cane and take it to their factory. However, all the respondents did not listen to him and they continued to get the sugar-cane cut. Therefore, P.W.1 Pandurang Chandekar lodged his complaint at Radhanagari police station against the accused factory and its officers i.e. respondent Nos. 1 to 3 for committing the breach of Clause III of the Maharashtra Sugar Factories Order, 1984. Thereafter, investigation commenced. During the course of investigation, truck No. MWK 274 came to be seized. The respondents-accused came to be arrested. After completion of investigation, charge sheet came to be filed.

3. During the course of trial, the substance of accusation was explained to the respondents accused. They pleaded not guilty to the said

charge and claimed to be tried. Their defence is that they have been falsely involved in this case on account of enmity between the factories.

4. During the course of trial, the prosecution examined five witnesses. The learned Special Judge after going through the evidence adduced by the prosecution acquitted the respondents i.e the original accused of the offences charged. Hence, this appeal.

5. I have heard Shri. Shitole, the learned A.P.P. for the appellant-State and Mrs. Varsha Palav, the learned advocate for the respondents i.e. original accused. I have also perused the record pertaining to the present case. After carefully considering the matter, I am of the opinion that this appeal deserves to be dismissed.

6. In the present case P.W.3 Shahabuddin who is the owner of the truck No. MWK 274 has turned hostile. P.W.4 Ganpati Patil is the brother of the field owner Govind Bala Patil, however, his evidence does not help the prosecution in any manner in establishing its case. P.W.5 is the Investigating Officer in the present case. The main witness in the present case is P.W.1 Pandurang Chandekar who is the Agricultural Overseer of the

complainant factory. P.W.1 Pandurang Chandekar has stated that on 11.12.89 he went to Gut No. 178 at village Fejiwade and found that accused Nos. 1 to 3 were present with their agriculture labour in the field i.e. Gut No.178 of village Fejiwade. The labourers were cutting the sugar-cane in that field. According to P.W.1 Pandurang Chandekar, Truck No. MWK 274 was standing in the field and the labourers were loading the sugar-cane in the said truck. Hence, P.W.1 Pandurang Chandekar went to the police station and immediately lodged his complaint. On account of this it was possible for the police to rush to village Fejiwade immediately and arrest the accused Nos. 1 to 3 as well as seize the truck and sugar-cane under panchanama.

7. It is not disputed that the accused 1 to 3 are the employees of accused factory. The complainant P.W.1 Pandurang Chandekar has stated that he lodged the complaint immediately. However, it is seen that the complaint is registered at about 3.30 p.m. The Complaint has not been lodged immediately and there is delay of three and half hours in lodging the complaint. This delay has not been explained by the prosecution. It would be necessary to explain this delay in view of the evidence of complainant that the complaint was lodged immediately. Moreover, it is the case of the

complainant that as he lodged his complaint immediately, it was possible for the police to rush to the spot and arrest the accused and seize the truck and sugar-cane. However, the evidence on record shows that all accused have been arrested on 30.12.89 i.e. 19 days after the incident. If at all the police had rushed to the spot and accused persons were present at the spot, the police could have arrested them immediately at the spot. However, this has not been done and the accused have been arrested after 19 days. Thus, this raises doubts in the mind about the veracity of the evidence of the complainant that the police rushed to the spot and they arrested the accused persons. It is doubtful whether the accused 1 to 3 were present at Gut No.178 at village Fejiwade at the time of visit of complainant P.W.1 Pandurang Chandekar to Fejiwade. It is pertinent to note that the complainant has stated that he does not know the accused 1 to 3 by face but he came know their names from one labourer. As stated earlier the accused persons were arrested after 19 days after the incident. In such case the identification of the accused by the complainant cannot be safely relied on.

8. So also the evidence on record shows that the truck No. MWK 274 and the sugar-cane were not

seized on the spot in Gut No. 178 at village Fejiwade but the truck came to be seized on the next day. Had the truck had been standing at the spot, the police would have seized the truck and the sugar-cane from the spot i.e. Gut No.178 of village Fejiwade. If the truck was found standing at Gut No.178 at village Fejiwade loaded with sugar-cane, the police Officers would have seized the same at the spot and drawn the panchanama accordingly. The panchanama of the truck shows that it was not drawn in Gut No.178 at village Fejiwade. In such case it was not known whether the truck was loaded with sugar-cane which was cut from Gut No.178 of village Fejiwade.

9. There is also no evidence forthcoming that the truck in question i.e. Truck No. MWK 274 was engaged by the accused factory for carrying the sugar-cane from Gut No.178 at village Fejiwade to the accused factory. Such evidence would have been available with the accused factory, however, no effort has been made to collect this evidence, which would have clearly shows that the truck No. MWK 274 was engaged by the accused factory.

10. It is the case of the complainant that on 11.12.89 he went to village Fejiwade as he had to show the field of Ahmad Choche to his labourers.

The complainant has stated that the field of Ahmad Choche is adjoining to Gut No.178. The accused factory has produced the schedule containing the villages allotted to the accused factory from which it can get the sugar-cane. However, after the entire schedule was perused it was found that it did not contain the name of Ahmad Choche. In such case, it is doubtful whether the complainant P.W.1 Pandurang Chandekar had gone to village Fejiwade and in particular to the field of said Ahmed Choche whose field is alleged to be adjoining to Gut No.178.

11. The learned Special Judge has taken all these aspects into consideration while acquitting the accused. Looking to the evidence on record, the conclusion of the learned Special Judge that all these circumstances throw a thick shadow of doubt on the genuineness of the prosecution case and therefore, the benefit of doubt goes in favour of the accused, cannot be faulted. The view taken by the learned Special Judge is a reasonable and possible view. It is well settled that, if the view of acquittal could have been reasonably arrived at then the mere circumstance that the appellate Court would have taken a different view would be no ground to interfere. In my view, the view of acquittal was a reasonable and possible

view.

12. In the circumstance, I find no merit in this appeal and the same is dismissed.